

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ALICIA ARCHER, an individual,

Plaintiff,

v.

SONY INTERACTIVE ENTERTAINMENT,
a foreign limited liability corporation, and
SUCKER PUNCH PRODUCTIONS, a foreign
limited liability corporation,

Defendants.

CASE NO. C19-1979-JCC

ORDER

Pursuant to the parties' stipulation and proposed order (Dkt. No. 11), the Court ENTERS the following protective order:

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order and Clawback Agreement. The parties acknowledge that this agreement is consistent with Local Civil Rule 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are

entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. “CONFIDENTIAL” MATERIAL

“Confidential” material shall include the following documents and tangible things produced or otherwise exchanged: (a) Sensitive personal identifying information, including, but not limited to, the personal identifiers listed in Local Civil Rule 5.2(a), individuals’ sensitive employment records, and documents which are protected by the Health Insurance Portability and Accountability Act; (b) Defendant’s non-public information related to the financial information and performance of Defendants; the identity, compensation, employment responsibilities, job performance, or personnel data of other non-party employees of Defendants; hiring, promotion and compensation practices, policies, and processes of Defendants; Defendants’ products or services or products or services under development; proprietary software or processes utilized by Defendants; business information, such as customers’ preferences and habits and the financial terms and conditions of Defendants’ dealings with customers, vendors, and business partners; customers and prospective customers lists; and any information that would be considered a trade secret as defined by Washington law; (c) Business or marketing plans of Defendant; (d) Information over which the designating party is obligated to maintain confidentiality by contract; and (e) Plaintiff’s financial and tax records.

3. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal confidential material.

However, the protections conferred by this agreement do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise.

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1 4. ACCESS TO AND USE OF CONFIDENTIAL INFORMATION

2 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
3 or produced by another party or by a non-party in connection with this case only for prosecuting,
4 defending, or attempting to settle this litigation. Confidential material may be disclosed only to the
5 categories of persons and under the conditions described in this agreement. Confidential material
6 must be stored and maintained by a receiving party at a location and in a secure manner that ensures
7 that access is limited to the persons authorized under this agreement.

8 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
9 by the court or permitted in writing by the designating party, a receiving party may disclose any
10 confidential material only to:

11 (a) the receiving party’s counsel of record in this action, as well as employees
12 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

13 (b) the officers, directors, and employees (including in house counsel) of the
14 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
15 agree that a particular document or material produced is for Attorney’s Eyes Only and is so
16 designated;

17 (c) experts and consultants to whom disclosure is reasonably necessary for this
18 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

19 (d) the court, court personnel, and court reporters and their staff;

20 (e) copy or imaging services retained by counsel to assist in the duplication of
21 confidential material, provided that counsel for the party retaining the copy or imaging service
22 instructs the service not to disclose any confidential material to third parties and to immediately
23 return all originals and copies of any confidential material;

24 (f) during their depositions, witnesses in the action to whom disclosure is
25 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
26 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of

1 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
2 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
3 under this agreement;

4 (g) the author or recipient of a document containing the information or a
5 custodian or other person who otherwise possessed or knew the information; and

6 (h) mediators engaged by the parties.

7 4.3 Filing Confidential Material. Before filing confidential material or discussing or
8 referencing such material in court filings, the filing party shall confer with the designating party,
9 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
10 remove the confidential designation, whether the document can be redacted, or whether a motion
11 to seal or stipulation and proposed order is warranted. During the meet and confer process, the
12 designating party must identify the basis for sealing the specific confidential information at issue,
13 and the filing party shall include this basis in its motion to seal, along with any objection to sealing
14 the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and
15 the standards that will be applied when a party seeks permission from the court to file material
16 under seal. A party who seeks to maintain the confidentiality of its information must satisfy the
17 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal.
18 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with
19 the strong presumption of public access to the Court's files.

20 5. DESIGNATING PROTECTED MATERIAL

21 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
22 or non-party that designates information or items for protection under this agreement must take
23 care to limit any such designation to specific material that qualifies under the appropriate
24 standards. The designating party must designate for protection only those parts of material,
25 documents, items, or oral or written communications that qualify, so that other portions of the
26

1 material, documents, items, or communications for which protection is not warranted are not swept
2 unjustifiably within the ambit of this agreement.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
4 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
5 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
6 and burdens on other parties) expose the designating party to sanctions.

7 If it comes to a designating party's attention that information or items that it designated for
8 protection do not qualify for protection, the designating party must promptly notify all other parties
9 that it is withdrawing the mistaken designation.

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this
11 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
12 ordered, disclosure or discovery material that qualifies for protection under this agreement must
13 be clearly so designated before or when the material is disclosed or produced.

14 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
15 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
16 the designating party must affix the word "CONFIDENTIAL" to each page that contains
17 confidential material. If only a portion or portions of the material on a page qualifies for protection,
18 the producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate
19 markings in the margins).

20 (b) Testimony given in deposition or in other pretrial proceedings: the parties
21 and any participating non-parties must identify on the record, during the deposition or other pretrial
22 proceeding, all protected testimony, without prejudice to their right to so designate other testimony
23 after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the
24 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or
25 exhibits thereto, as confidential. If a party or non-party desires to protect confidential information
26 at trial, the issue should be addressed during the pre-trial conference.

1 (c) Other tangible items: the producing party must affix in a prominent place
2 on the exterior of the container or containers in which the information or item is stored the word
3 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
4 the producing party, to the extent practicable, shall identify the protected portion(s).

5 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
6 designate qualified information or items does not, standing alone, waive the designating party’s
7 right to secure protection under this agreement for such material. Upon timely correction of a
8 designation, the receiving party must make reasonable efforts to ensure that the material is treated
9 in accordance with the provisions of this agreement.

10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
12 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
13 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
14 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
15 challenge a confidentiality designation by electing not to mount a challenge promptly after the
16 original designation is disclosed.

17 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
18 regarding confidential designations without court involvement. Any motion regarding confidential
19 designations or for a protective order must include a certification, in the motion or in a declaration
20 or affidavit, that the movant has engaged in a good faith meet and confer conference with other
21 affected parties in an effort to resolve the dispute without court action. The certification must list
22 the date, manner, and participants to the conference. A good faith effort to confer requires a face-
23 to-face meeting or a telephone conference.

24 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
25 intervention, the designating party may file and serve a motion to retain confidentiality under Local
26 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of

persuasion in any such motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as confidential until the court rules on the challenge.

7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

Any person in possession of another party’s Confidential information shall take reasonable steps to protect the security and confidentiality of such Confidential information, protect against any reasonably anticipated threats or hazards to the security of such Confidential information, and protect against unauthorized access to or use of such Confidential information.

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the

1 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,
2 and (d) request that such person or persons execute the "Acknowledgment and Agreement to Be
3 Bound" that is attached hereto as Exhibit A.

4 If the receiving party discovers a breach of security, including any actual or suspected
5 unauthorized access, relating to another party's Confidential information, the receiving party
6 shall: (a) promptly provide written notice to the designating party of such breach; (b) investigate
7 and take reasonable efforts to remediate the effects of the breach; and (c) provide sufficient
8 information about the breach that the designating Party can reasonably ascertain the size and scope
9 of the breach. If required by any judicial or governmental request, requirement, or order to disclose
10 such information, the receiving party shall take all reasonable steps to give the designating party
11 sufficient prior notice in order to contest such request, requirement, or order through legal means.
12 The receiving party agrees to cooperate with the designating party or law enforcement in
13 investigating any such security incident. In any event, the receiving party shall promptly take
14 reasonable corrective action to terminate the unauthorized access.

15 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
16 PROTECTED MATERIAL

17 When a producing party gives notice to receiving parties that certain inadvertently
18 produced material is subject to a claim of privilege or other protection, the obligations of the
19 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
20 is not intended to modify whatever procedure may be established in an e-discovery order or
21 agreement that provides for production without prior privilege review. The parties agree to the
22 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein. The parties agree to
23 protection of privileged and otherwise protected documents against claims of waiver (including as
24 against third parties and in other federal and state proceedings) as follows:

25 (a) The inadvertent disclosure or production of documents by a producing party
26 subject to a legally recognized claim of privilege, including without limitation the attorney-client

1 privilege and the work-product doctrine, to a receiving party, shall in no way constitute the
2 voluntary disclosure of such document.

3 (b) The inadvertent disclosure or production of any document in this action
4 shall not result in the waiver of any privilege, evidentiary protection, or other protection associated
5 with such document as to the receiving party or any third parties, and shall not result in any waiver,
6 including subject matter waiver, of any kind.

7 (c) If, during the course of this litigation, a party determines that any document
8 produced by another party is likely subject to a legally recognizable privilege or work-product
9 protection (“Protected Document”):

10 (i) the receiving party shall: (A) refrain from reading the Protected
11 Document any more closely than is necessary to ascertain that it is privileged or otherwise
12 protected from disclosure; (B) immediately notify the producing party in writing that it has
13 discovered documents believed to be privileged or protected; (C) specifically identify the Protected
14 Documents by Bates number range or hash value; and, (D) within ten days of discovery by the
15 receiving party, return, sequester, or destroy all copies of such Protected Documents, along with
16 any notes, abstracts, or compilations of the content thereof. To the extent that a Protected
17 Document has been loaded into a litigation review database under the control of the receiving
18 party, the receiving party shall have all electronic copies of the Protected Document extracted from
19 the database. Where such Protected Documents cannot be destroyed or separated, they shall not
20 be reviewed, disclosed, or otherwise used by the receiving party. Notwithstanding, the receiving
21 party is under no obligation to search or review the producing party’s documents to identify
22 potentially privileged or work product Protected Documents.

23 (ii) If the producing party intends to assert a claim of privilege or work-
24 product protection over documents identified by the receiving party as Protected Documents, the
25 producing party will, within ten days of receiving the receiving party’s written notification
26 described above, inform the receiving party of such intention in writing and shall provide the

1 receiving party with a log for such Protected Documents that is consistent with the requirements
2 of the Federal Rules of Civil Procedure, setting forth the basis for the claim of privilege or other
3 protection. In the event that any portion of a Protected Document does not contain privileged or
4 protected information, the producing party shall also provide to the receiving party a redacted copy
5 of the document that omits the information that the producing party believes is subject to a claim
6 of privilege or work-product protection.

7 (d) If, during the course of this litigation, a party determines it has produced a
8 Protected Document:

9 (i) The producing party may notify the receiving party of such
10 inadvertent production in writing, and demand the return of such documents. Such notice shall be
11 in writing; however, it may be delivered orally on the record at a deposition, promptly followed
12 up in writing. The producing party's written notice will identify the Protected Document
13 inadvertently produced by Bates number range or hash value, the privilege or protection claimed,
14 and the basis for the assertion of the privilege and shall provide the receiving party with a log for
15 such Protected Documents that is consistent with the requirements of the Federal Rules of Civil
16 Procedure, setting forth the basis for the claim of privilege or work-product protection. In the event
17 that any portion of the Protected Document does not contain privileged or protected information,
18 the producing party shall also provide to the receiving party a redacted copy of the document that
19 omits the information that the producing party believes is subject to a claim of privilege or work-
20 product protection.

21 (ii) The receiving party must, within ten days of receiving the producing
22 party's written notification described above, return, sequester, or destroy the Protected Document
23 and any copies, along with any notes, abstracts, or compilations of the content thereof. To the
24 extent that a Protected Document has been loaded into a litigation review database under the
25 control of the receiving party, the receiving party shall have all electronic copies of the Protected
26 Document extracted from the database.

1 (e) To the extent that the information contained in a Protected Document has
2 already been used in or described in other documents generated or maintained by the receiving
3 party prior to the date of receipt of written notice by the producing party as set forth in paragraphs
4 (c)(ii) and d(i), then the receiving party shall sequester such documents until the claim has been
5 resolved. If the receiving party disclosed the Protected Document before being notified of its
6 inadvertent production, it must take reasonable steps to retrieve it.

7 (f) The receiving party's return, sequestering, or destruction of Protected
8 Documents as provided herein will not act as a waiver of the requesting party's right to move for
9 the production of the returned, sequestered, or destroyed documents on the grounds that the
10 documents are not, in fact, subject to a viable claim of privilege or work-product protection.
11 However, the receiving party is prohibited and estopped from arguing that:

12 (i) the inadvertent disclosure or production of the Protected Documents
13 acts as a waiver of an applicable privilege or work-product protection;

14 (ii) the producing party did not take reasonable steps to prevent the
15 disclosure of the Protected Documents; or

16 (iii) the producing party failed to take reasonable or timely steps to
17 rectify the error.

18 (g) Either party may submit Protected Documents to the Court under seal for a
19 determination of the claim of privilege or work-product protection. The producing party shall
20 preserve the Protected Documents until such claim is resolved. The receiving party may not use
21 the Protected Documents for any purpose absent this Court's order.

22 (h) Upon a determination by the Court that the Protected Documents are
23 protected by the applicable privilege or work-product protection, and if the Protected Documents
24 have been sequestered rather than returned or destroyed by the receiving party, and subject to the
25 exceptions outlined in Paragraph 10 below, the Protected Documents shall be returned or destroyed
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1 within 10 days of the Court's order. The Court may also order the identification by the receiving
2 party of Protected Documents by search terms or other means.

3 (i) Nothing contained herein is intended to, or shall serve to limit a party's right
4 to conduct a review of documents, data (including electronically stored information), and other
5 information, including without limitation, metadata, for relevance, responsiveness, and/or the
6 segregation of privileged and/or protected information before such information is produced to
7 another party.

8 (j) By operation of the parties' agreement, the parties are specifically afforded
9 the protections of Fed. R. Evid. 502(e).

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11 10. NON TERMINATION AND RETURN OF DOCUMENTS

12 (a) Within 60 days after the termination of this action, including all appeals, each
13 receiving party must return all confidential material to the producing party, including all copies,
14 extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
15 destruction.

16 (b) If Confidential material or Protected Documents have been loaded into any
17 litigation review database, the attorney for the party using such database shall have the
18 responsibility of ensuring that all such Confidential material or Protected Documents, including
19 all associated images and native files, are extracted from such databases (including any associated
20 staging databases) and destroyed. "Destroyed" shall mean deletion of documents from all
21 databases, applications, and/or file systems in a manner such that they are not readily accessible
22 without the use of specialized tools or techniques typically used by a forensic expert.

23 (c) Counsel of record for the parties may retain copies of any part of the Confidential
24 material or Protected Documents produced by others that has become part of counsel's official file
25 of this litigation as well as abstracts or summaries of materials that reference Confidential material
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1 or Protected Documents that contain counsel's mental impressions or opinions. Such copies shall
2 remain subject to the terms of this Protective Order.

3 (d) The parties, counsel of record for the parties, and experts or consultants for a party
4 shall not be required to return or to destroy any Confidential material or Protected Documents to
5 the extent such information is (i) stored on media that is generally considered not reasonably
6 accessible, such as disaster recovery backup tapes, or (ii) only retrievable through the use of
7 specialized tools or techniques typically used by a forensic expert; provided that to the extent any
8 Confidential material or Protected Documents are not returned or destroyed due to the foregoing
9 reasons, such Confidential material or Protected Documents shall remain subject to the
10 confidentiality obligations of this Protective Order.

11 The confidentiality obligations imposed by this agreement shall remain in effect until a designating
12 party agrees otherwise in writing or a court orders otherwise.

13 11. COMPUTATION OF TIME

14 The computation of any period of time prescribed or allowed by this Order shall be governed by
15 the provisions for computing time set forth in FRCP 6.

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED: February 21, 2020

s/ Tiffany M. Cartwright

Tiffany M. Cartwright, WSBA #43564

tiffanyc@mhb.com

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Attorneys for Plaintiff

7 DATED: February 21, 2020

s/ Breanne Sheetz Martell

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Attorneys for Defendant

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1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
3 documents in this proceeding, inadvertent or otherwise, shall not, for the purposes of this
4 proceeding or any other proceeding in any other court, constitute a waiver by the producing party
5 of any privilege applicable to those documents, including the attorney-client privilege, attorney
6 work-product protection, or any other privilege or protection recognized by law, unless expressly
7 waived by the producing party for the purposes of this proceeding.

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9 DATED this 10th day of March 2020.

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12 A handwritten signature in black ink, reading "John C. Coughenour", is written over a horizontal line.

13 John C. Coughenour
14 UNITED STATES DISTRICT JUDGE
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of
5 perjury that I have read in its entirety and understand the Stipulated Protective Order that was
6 issued by the United States District Court for the Western District of Washington on [date] in the
7 case of *Alicia Archer v. Sony Interactive Entertainment LLC and Sucker Punch Productions, LLC*,
8 Case No. 2:19-cv-01979-JCC. I agree to comply with and to be bound by all the terms of this
9 Stipulated Protective Order and I understand and acknowledge that failure to so comply could
10 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will
11 not disclose in any manner any information or item that is subject to this Stipulated Protective
12 Order to any person or entity except in strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
15 Order, even if such enforcement proceedings occur after termination of this action.

16 Date: _____

17 City and State where sworn and signed: _____

18 Printed name: _____

19 Signature: _____